DOCUMENT RESUME

ED 459 756 IR 058 250

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TITLE	WIPO--Advancing Access to Information for Print Disabled People.
PUB DATE	2001-08-00
NOTE	9p.; In: Libraries and Librarians: Making a Difference in the Knowledge Age. Council and General Conference: Conference Programme and Proceedings (67th, Boston, MA, August 16-25, 2001); see IR 058 199.
AVAILABLE FROM	For full text: http://www.ifla.org.
PUB TYPE	Reports - Descriptive (141) -- Speeches/Meeting Papers (150)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Access to Information; *Copyrights; Criteria; *International Organizations; Legislation; Role; *User Needs (Information); *Users (Information); *Visual Impairments
IDENTIFIERS	International Federation of Library Associations; UNESCO; *World Intellectual Property Organization; World Trade Organization

ABSTRACT

This paper examines the role of the World Intellectual Property Organisation (WIPO) as it relates to copyright and to visually impaired people's right to read. The paper starts by summarizing the barriers that can arise both from refusal to grant permission for alternative formats and from the use of rights management schemes incompatible with screen reading technology. It refers to the need for international agreements as well as an accumulation of national legislation. The workings of WIPO are examined, and the three-step test (i.e., criteria by which member states are allowed to introduce exceptions to the exclusive rights of copyright owners) is highlighted. Contracts within the past year among WIPO, the World Blind Union, and the International Federation of Libraries and Associations (IFLA) Section of Libraries for the Blind are detailed. The paper then refers to the related roles of the World Trade Organization and of UNESCO. It lists what ideally the Royal National Institute for the Blind would like to be able to obtain from WIPO in terms of national and international legislation and asks what steps must be taken to achieve this, in hopes that it will motivate people to contact their national governments and ask them to raise these issues within WIPO. (MES)

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ED 459 756

67th IFLA Council and General Conference August 16-25, 2001

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Code Number: 078-144-E
Division Number: III
Professional Group: Libraries for the Blind
Joint Meeting with: Copyright and Other Legal Matters
Meeting Number: 144
Simultaneous Interpretation: -

WIPO – Advancing Access to Information for Print Disabled People

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Abstract:

This paper examines the role of the World Intellectual Property Organisation (WIPO) as it relates to copyright and to visually impaired people's right to read. It starts by summarising the barriers that can arise both from refusal to grant permission for alternative formats and from the use of rights management schemes incompatible with screen reading technology. It refers to the need for international agreements as well as an accumulation of national legislation. It examines in some detail the workings of WIPO and highlights the criteria of the three-step test. It details contacts within the past year between WIPO, the World Blind Union and the IFLA Section of Libraries for the Blind. It then refers to the related roles of the World Trade Organisation and of UNESCO. It lists what ideally we would like to be able to obtain from WIPO in terms of national and international legislation, and asks what steps must be taken to achieve this. It is hoped that the paper will motivate people to contact their national governments and ask them to raise these issues within WIPO.

1. Purpose

1.1. This paper serves as a brief introduction to the World Intellectual Property Organisation (WIPO) and to the recent contacts between it, the World Blind Union (WBU) and IFLA's Section of Libraries for the Blind (SLB). I hope it will inform discussion on the best way to use international bodies to promote and

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protect the right of visually impaired people to equitable access to information. It is also hoped that it will prompt consequent action.

1.2. In most instances in this paper reference is made to "visually impaired people" or "blind and partially sighted people" (two terms used interchangeably) because that is my area of work. However, nothing that is written here is meant to deny the rights of other print disabled people.

2. Background - Copyright Barriers for Visually Impaired people

2.1. Where exclusive rights of production, communication to the public or distribution are not qualified by legislation, then the explicit permission of the rights holder is required before any information can be transferred – or should we say trans-formatted – from its original presentation into a format accessible to someone with a visual impairment. Traditionally these formats have meant braille, audio or enlarged print.

2.2. The new dimension presented by the electronic era means that visually impaired people can also access material using a personal computer, whether that material is on line or on some form of disk. Doing so involves some form of assistive technology, typically screen reading software which enables the material to be accessed by enlarged display, refreshable braille or synthetic speech. Unfortunately, information is sometimes presented in such a way as to prevent or impede the manipulation that is required to render it accessible to visually impaired people. This may simply be because the creator wants to control the way in which their material is displayed, or it may be for rights management purposes.

2.3. Thus, there are now two copyright-related barriers that may have to be surmounted before information can be accessed: the permission of the rights holder and the potential technological block of digital rights management schemes or other forms of presentation incompatible with screen reading technology..

2.4. Over the past decade or so a number of countries have introduced copyright legislation for the benefit of print disabled people (and usually not just visually impaired people). However, the technical developments referred to above mean that it may not be adequate for such legislation to assert that certain acts of trans-formatting do not infringe copyright and thus do not need the express permission of the rights holder. It may be necessary to find ways of obliging rights holders to make their material available in a form that can be manipulated sufficiently to allow equitable access by a blind or partially sighted person.

2.5. The electronic age has also totally changed the manner in which "hard" alternative formats are created. Any legislative solution therefore has to take account of the "transient" files created during the course of braille, large print or digital audio production.

2.6. Such files can very easily be transmitted electronically around the World. This can vastly reduce the need for duplication and can speed up access to material. IFLA Section of Libraries for the Blind aspires to a "virtual World library of alternative formats". The realisation of this concept depends in part on the eradication of national boundaries imposed by separate territorial legislation.

(Note: Some of the implications of digital technology for visually impaired readers were examined in the paper entitled: RIGHTS v. RIGHTS – WHEN COPYING IS NOT COPYING - How Copyright Impinges On Digital Media And Visually Impaired Readers, presented to the IFLA General Assembly in Amsterdam in 1998, available at www.ifla.org/IV/ifla64/049-124e.htm When that paper was written, however, we had not yet become so aware of the implications of technological protection measures and digital rights management.)

3. The Role of International Bodies

3.1. Naturally, we wish to see provisions for blind and partially sighted people introduced into the copyright legislation of countries who do not yet have such provision. However, an accumulation of national provisions is in itself inadequate, and an international arrangement needs to be reached if the electronic age is to bring its full potential to those using alternative formats. WIPO is one channel through which to achieve this.

4. The World Intellectual Property Organisation (WIPO)

4.1. The World Intellectual Property Organisation (WIPO) is an agency of the United Nations. It evolved out of previous conventions and organisations, dating back to 1883, and was established by a convention signed in Stockholm in 1967.

4.2. As of March 13, 2001, 177 nations belonged. This includes all the major powers such as China, the Russian Federation – and the United States!

4.2. Its headquarters are in Geneva, Switzerland, although it also has an office in New York which liaises with the UN agencies at UN headquarters and deals with the corporate sector in the United States.

4.4. WIPO's principal objective is to "promote the protection of intellectual property throughout the World through co-operation among states and, where appropriate, collaboration with any other international organisation."

4.5. It administers 21 treaties, of which six relate to copyright.

These are:-:

- Berne Convention for the Protection of Literary and Artistic Works, whose earliest Act dates back to 1886, with the latest Act dated 1971);
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961);
- Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms (1971);
- Treaty on the International Registration of Audio-visual Works (1989);
- the WIPO Copyright Treaty (1996, not yet in force) and the
- WIPO Performances and Phonograms Treaty (1996, not yet in force).

4.6. The last two treaties will come into force once sufficient member states have ratified them.

4.7. Attempts to conclude a treaty or a protocol on audio-visual rights at a diplomatic conference in December 2000 were unsuccessful.

4.8. The texts of all the treaties that WIPO administers are on its website, www.wipo.int or www.ompi.int. Almost all appear to be available in at least two formats (usually html and .pdf formats)

4.9. Other WIPO treaties deal with issues such as patents or industrial design.

4.10. WIPO has a body of permanent staff, but policy discussions and diplomatic conferences also involve representatives of the nations that belong to the Organisation.

4.11. Member states keep in routine contact with WIPO through their permanent missions to the United Nations in Geneva. This city is also host to the World Trade Organisation and the World Health Organisation, so diplomats posted to Geneva may carry a number of portfolios.

4.12. At diplomatic conferences and standing committees, states are likely to be represented by a member of staff from their permanent mission and civil servants from the capitals of the countries concerned. Politicians may also attend on some occasions, although this appears to be uncommon.

4.13. There is an annual meeting of WIPO at which member states agree budgets and work programmes.

4.14. WIPO is financed primarily from the income generated by services to industry, such as trade mark registration. Copyright work does not itself generate income, but is sustained from the other areas of WIPO activity.

4.15. The main forum for discussion on copyright issues is the copyright standing committee. When it is felt that a treaty can and should be concluded, a diplomatic conference is held. Diplomatic conferences and meetings of standing committees are also attended by Inter-Governmental Organisations (IGO's) such as UNESCO or the International Labour Organisation) and by accredited non-government organisations (NGO's), representing interested groups of people. In the case of copyright these would include rightsholders, creators or performers – and blind people!

4.16. At the discretion of the Chair, NGO's can speak in plenary sessions and in open committee sessions. Their presence also gives them the opportunity to distribute their literature and to attempt to buttonhole delegates.

5. Three Step Test

5.1. WIPO's attitude to the needs of people with a "print disability" has been one of benevolent tolerance. Under Article 9 (2) of the Berne Convention, member states are allowed to introduce exceptions to the exclusive rights of copyright owners if those exceptions comply with the so-called three-step test, namely:-

- They must be confined to certain special cases;
- These cases must not conflict with the normal exploitation of a work; and
- These cases must not unreasonably prejudice the legitimate interests of the right holder.

5.2. The copyright directive adopted this year by the European Union also subjects any of its optional exceptions to the same test (Article 5.4).

5.3. Subsequent WIPO treaties have all followed this "minimal" line, and the Organisation has not taken any steps actively to encourage provision for people with a reading-related disability.

6. Contacts with the World Blind Union and IFLA

6.1. The World Blind Union has had permanent observer status as a non-governmental organisation with WIPO since 1993. However, until recently it does not appear to have taken a very close interest in copyright issues. The exception to this would be its European regional body, which has been very actively involved in relation to the passage of the latest European Union copyright directive,

6.2. At its General Assembly in Melbourne, Australia, in November 2000 the WBU adopted a resolution on copyright. This was inspired by the resolution adopted by the Section of Libraries for the Blind at its meeting during the IFLA Assembly in Jerusalem last year. It pointed to the abuse of copyright as one of the barriers to equitable access to information; it called for international as well as national solutions; these should be based on legislation enshrining rights, not merely on licences streamlining procedures; it mentioned WIPO, UNESCO and international organisations of rights holders as the targets of future work.

6.3. A delegation representing the World Blind Union and the IFLA SLB visited WIPO in Geneva in December, 2000. I led that delegation, accompanied by Henri Chauchat, a member of the IFLA SLB copyright committee. Our pretext was to attend the opening days of a diplomatic conference on audio-visual Rights. We did raise issues surrounding audio description in this forum, but our main purpose was to make initial contact with WIPO and try to put our concerns on its agenda.

6.4. I was able to address a plenary session of the Diplomatic Conference, and we also had a 40-minute meeting with Jorgen Blomqvist, WIPO's Director of Copyright Law. We were able to distribute a briefing paper and speak to some of the delegates.

6.5. Mr Blomqvist advised us that, for any treaty to insist on exceptions, rather than merely tolerating them, the Berne Convention would have to be amended unanimously by its signatories.

6.6. The same delegation returned to Geneva on 11th June, 2001, for a meeting with Kurt Kemper, Director – Advisor in charge of copyright matters, Co-operation for Development (Intellectual Property Law) Department.

6.7. Mr Kemper's section provides advice to developing countries – virtually all of Asia, Latin America and Africa – who are either introducing copyright legislation for the first time or amending it. Under its agreement with the World Trade Organisation (WTO), WIPO does this even for countries that do not belong to WIPO but are members or aspiring to be members of WTO.

6.8. A separate section offers similar facilities to "countries in transition", i.e. most of Eastern and central Europe and the former Soviet republics.

6.9. WIPO offers model legislative provisions, including options, but currently these say nothing about visual impairment.

6.10. Mr Kemper undertook to look into existing legislation in some member states and to discuss with colleagues the possibility of including in future advice

a) the option of legislating for the needs of visually impaired people, and

b) some alternative ways of so legislating if countries chose to do this.

6.11. This would be welcome, but it is not the same as saying that WIPO would **encourage** member states t introduce such provision.

7. Other International Bodies.

a) World Trade Organisation (WTO)

7.1. For the past three or four years IFLA has been alert to the development of the World Trade Organisation, as demonstrated by the work of the Committee for Copyright and other Legal Matters, as well as in papers presented to the IFLA Assembly in Jerusalem in 2000. WTO is not a UN agency, but did sign a co-operation treaty with WIPO in 1995.

7.2. WTO sees intellectual property purely as a commodity. The Trade Related Intellectual Property Rights (TRIPS) Treaty of 1995 can be seen as ceding ultimate power over intellectual property from WIPO to WTO. See in particular Steve Shrybman's paper to that conference (www.ifla.org/IV/ifla66/papers/176-148e.htm),

7.3. The creation of WTO has pushed intellectual property up the agenda in many countries. They want to join WTO because membership opens up markets, and so they are prepared to accept the obligations of membership, which include copyright legislation and its implementation.

7.4. The TRIPS agreement had obliged many developing states as a condition of entry to introduce some form of copyright legislation by January 2000. The 40 least developed countries in the World have until January 2006.

7.5. WTO has teeth to enforce its rules – WIPO does not. WTO members can be brought to book at annual TRIPS forums, and have to submit to a mandatory dispute resolution procedure.

7.6. Nonetheless, Article 13 of TRIPS does re-iterate the circumstances in which exceptions to exclusive rights may be permitted, that is to say the three-step test of the Berne Convention.

7.7. Moreover, WTO has only a handful of staff dealing with copyright – WIPO has far more and so is still the source of expert knowledge and advice.

7.8. Nor did the existence of TRIPS prevent WIPO from adopting two major treaties in December, 1996.

b) The United Nations Educational, Scientific and Cultural Organisation (UNESCO)

7.9. UNESCO, too, has long taken an interest in copyright. In 1952 it adopted a Universal Copyright Convention. Its main aim was to ensure that no signatory nation would give its domestic authors more favourable treatment than that given to authors from other signatory nations. It also covers copyright notices and duration of copyright after death.

7.10. Where nations are signatories to both WIPO and UNESCO treaties, the former takes precedence.

7.11. In 1982, a "Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright" was jointly convened by UNESCO and WIPO. It met in Paris from 25th to 27th October of that year, under the chairmanship of Mr Mihaly Ficsor. At the conclusion of the meeting, model provisions were adopted. The report of the Joint Working Group was discussed at the joint session of the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention in Geneva in December 1983. Mr Ficsor has expressed reservations as to the adequacy of the Model Provisions. They appear, anyway, to have died away from the agendas of the two organisations. Reports on the Joint Group's work appeared in three different issues of WIPO's journal Copyright – See Appendix.

8. Conclusion

8.1. There is no shortage of legislation and treaties on copyright. Anyone wishing to spend the next decade doing nothing but study the matter should look at www.llrx.com/features/iplaw2.htm – and not only because its compiler, Stefanie Weigmann, is a Senior Librarian and Instructor in the Law School of the University of our host city, Boston.

8.2. The copyright laws of the major English-speaking countries of the World and the members of the European Union as they relate to access by visually impaired people are explored in two reports from RNIB, Copyright Law and the Rights of Blind People, to be found at www.rnib.org.uk/wesupply/publicat/copyr.htm and www.rnib.org.uk/wesupply/publicat/copyr2000.htm

8.3. While some individual states have legislated, our needs and rights do not appear to have featured recently on the international stage.

So, what do we need from WIPO and other international bodies?

8.3.1. We need international treaties that allow the creation of non-commercial alternative, accessible versions and their free flow across international boundaries..

8.3.2. We need national legislative regimes that are harmonised to ensure consistency for organisations, individuals and rights holders, protecting rights holders from exploitation and protecting visually impaired people and their agencies from unjustified barriers.

8.3.3. Equally, however, we need international treaties and harmonised national legislation which empowers member states to oblige rights holders to make available to bona fide blind and partially sighted people, and agencies working on their behalf, accessible versions of material ordinarily presented to the public wrapped in any form of rights management scheme, or protected by some other technological measure which renders them inaccessible to us.

8.4. The European Union directive followed the line of the Berne convention in allowing, but not obliging member states to introduce exceptions into their copyright laws for blind and partially sighted people (Article 5.3.b) – even though the overall purpose of the measure was to harmonise copyright provisions and strengthen the single internal market.

8.5. Interestingly, however, the directive does stipulate that, where such exceptions do exist, member states must take steps to ensure that rights holder make available to them the means of circumventing technological protection measures (Article 6.4.1).

To what extent can WIPO deliver what we need?

8.6. WIPO officials have shown themselves willing to listen to our concerns and to learn more abut them. They may be ready to advise member states on the choices facing them in relation to the access rights of visually impaired people. We have not yet reached the stage where we can be certain they would actually encourage member states to take account of our needs..

8.7. To push WIPO towards any element of compulsion on individual states, let alone a treaty about international exchange, will be a great deal more difficult..

8.8. Continuing pressure at the centre from WBU and IFLA will be of only limited avail if not re-inforced by each of us persuading our national governments to raise this on the WIPO stage, perhaps starting with

the next annual meeting in September 2001 or the next meeting of the copyright standing committee in November 2001.

8.9. I stated at the beginning of this paper that one of its purposes was to stimulate action. The worlds of publishing and of information technology have dynamic energy far greater than that of any UN agency. Collaboration may come from within WIPO, but the drive and enthusiasm for change has to come from outside – and that, ladies and gentleman, is where you all fit in!

8.10. The respected Finnish copyright expert, Jukka Liedes, told us that the 1996 World Copyright Treaty had "taken a generation" to achieve. We had better start on our dream treaty today.

Appendix: references to the work of the UNESCO/WIPO joint working group, 1982, in the WIPO Journal "Copyright".

- issue dated December, 1982, pp354-356;
- issue dated February, 1984, pp60-62;
- issue dated September, 1985, pp283-284.

Acknowledgements

My thanks are due to a number of people on whose work and ideas I have drawn in compiling this paper; They appear below in no order of priority.

Michelle Crowe, temporary staff member, Royal National Institute for the Blind, United Kingdom
John M. Day, Gallaudet University, USA
Cathy Jewell, Information Officer, World Intellectual Property Organisation, Geneva
Stephen P. King, Royal National Institute for the Blind, United Kingdom
Mihaly Ficsor, Hungary
Steven Shrybman, West Coast Environmental Law, Vancouver, Canada